

**STATE OF RHODE ISLAND CITY OF EAST PROVIDENCE
COUNTY OF PROVIDENCE ZONING BOARD OF REVIEW**

MINUTES

A meeting of the East Providence Zoning Board of Review was held at 7:00 P.M., on Wednesday, 1 April 2015, in the City Council Chambers, East Providence City Hall.

The following members were present:

Eugene Saveory – Chairman

Michael Beauparlant – Vice-Chairman - ABSENT

John Braga - ABSENT

Pier-Mari Toledo

Antonio H. Cunha

Richard Croke, Sr. – 1st Alternate

Gary Pascoa – 2nd Alternate

Edward Pimentel – Zoning Officer / Clerk

Gregory Dias – Assistant City Solicitor

Chairman Saveory announces that it is the policy of the Zoning Board of Review to caution all petitioners that they have the right to counsel before the Board and failure to do so at this time does not constitute sufficient grounds for a change in circumstances under the

eighteen-month repetitive petition clause. All petitioners are also cautioned that if the petition is approved, all construction must be done in compliance with the submitted plan(s), application and testimony presented to the Zoning Board of Review. A change of any sought must obtain the requisite approval of the Zoning Board of Review. All work that deviates from the approval will be ordered halted and promptly removed. Comments will be limited to the petition being heard and no comments will be heard that do not pertain to an item scheduled on tonight's docket. He also notes that it is the policy of the Board that no new agenda item will be heard after 10:30 PM.

Chairman Saveory also notes that the Board welcomes any commentary from the public provided it solely pertains to an item on tonight's docket.

A. Swearing in of the Zoning Officer

Chairman Saveory asks Assistant City Solicitor Dias to swear in the Zoning Officer, Mr. Pimentel.

II. SEATING OF ALTERNATE MEMBERS

Chairman Saveory informs the public that Mr. Beauparlant is absent, and therefore Mr. Croke, 1st Alternate, will be both a participating as

well as voting member on all of tonight's agenda items.

Chairman Saveory then informs the public that Mr. Braga is absent, and therefore Mr. Pascoa, 2nd Alternate, will be both a participating as well as voting member on all of tonight's agenda items.

III. APPROVAL OF ZONING BOARD MINUTES

Zoning Officer announces that the Minutes of 3 December 2014, should be continued due to the absence of both Mr. Beauparlant and Mr. Braga.

Motion by Mr. Croke to continue approval of the respective minutes to the 6 May 2015 hearing. Motion is Seconded by Ms. Toledo, and Unanimously approved.

IV. ZONING OFFICER'S REPORT

Chairman Saveory announces that there is no report this month.

V. CORRESPONDENCE / DISCUSSION

A. Claudette C. Fields, 1474 Pawtucket Avenue, Approved 10 September 2014 – Petition No. 6553. Request for a six-month extension – extension submitted by petitioner's counsel, Attorney

Christine Engustian.

Zoning Officer informs the Board that it is his recommendation that the subject request be withdrawn without prejudice due to the fact that the Tolling Statute – stated statute affording additional time on all approvals by allowing the expiration period associated with said approvals to start only after the statute itself has expired – will not expire until June 2015, unless of course it is once again continued by the legislature. The initial zoning approval does not even commence until the expiration of the Tolling Statute, which would continue said approval until the end of 2015, and then if required an extension can be decided. He simply wants to avoid exhausting Ms. Fields time limits sooner than need be.

Motion by Ms. Toledo to withdraw the subject request for a six-month extension. The motion is Seconded by Mr. Croke, and Unanimously approved.

VI. STAFF REPORTS

A. Planning Department Staff Report – Previously Submitted.

B. Complaint List – March, 2015

Chairman Saveory announces that the referenced documents are

already rendered part of the official record.

VII. CONTINUED BUSINESS

1A. Goodwin Realty, Inc., C/o Jack Goodwin, and Cat Adoptive Team Services, 5 – 7 Forbes Street, being Map 411, Block 08, Parcel 074.00, in a Commercial 2 District. (Waive Site Plan Submission - Petition No. 6574)

1B. Goodwin Realty, Inc., C/o Jack Goodwin, and Cat Adoptive Team Services, 5 – 7 Forbes Street, being Map 411, Block 08, Parcel 074.00, in a Commercial 2 District. (Use Variance - Petition No. 6574)

Zoning Officer informs the Board that he still has not heard anything from the petitioner, although rumor has it that they found an alternate site in the Town of Barrington. The Board continued the matter from last month out of an abundance of caution. It is now the Board to decide whether they wish to withdraw – and do so with or without prejudice.

Chairman Saveory informs fellow Board members that there was an article in the East Providence Post acknowledging that they did in fact locate in Barrington.

Chairman Saveory proceeds to read the referenced article verbatim

into the record.

Motion by Mr. Cunha to withdraw both petitions without prejudice. The motion is Seconded by Ms. Toledo, and Unanimously approved.

2A. Stanley Engineering, Inc., C/o Ellsworth Stanley, and Americo Real Estate, 360 – 362 Taunton Avenue, being Map 306, Block 01, Parcel 016.00, in a Commercial 3 District. (Use Variance - Petition No. 6577)

[Request for continuance to 6 May 2015, to complete Development Plan Review.]

2B. Stanley Engineering, Inc., C/o Ellsworth Stanley, and Americo Real Estate, 360 – 362 Taunton Avenue, being Map 306, Block 01, Parcel 016.00, in a Commercial 3 District. (Dimensional Variances - Petition No. 6578)

[Request for continuance to 6 May 2015, to complete Development Plan Review.]

Zoning Officer informs the Board that there has been a formal request from the petitioner's legal counsel, Attorney Martin Sleprow, to continue the subject petitions to the 6 May 2015, zoning hearing. The reason for the continuance is due to the fact that they have yet to complete the Development Plan Review process.

**Motion by Ms. Toledo to continue the subject petitions to 6 May 2015.
The motion is Seconded by Mr. Cunha, and Unanimously approved.**

3. VSH Realty, Inc., and Cumberland Farms, Inc., 2812 Pawtucket Avenue, being Map 309, Block 06, Parcel 007.00, in a Commercial 2 District. (Dimensional Variances - Petition No. 6579)

[Schedule special hearing date.]

Attorney Dylan Conley informs the Board that he represents the subject petitioners. They are still working through the regulatory review process and confirming the feasibility of the overall project. He would therefore formally request a continuance to the 6 May 2015, zoning hearing.

Chairman Saveory inquires about the status of the project, specifically certain modifications that have been brought to his attention. It is his understanding that said modifications could be deemed quite major, thereby requiring further review and approval by the Planning Board. He simply wants Counsel to know that if this is in fact required, that must be completed prior to returning to the Zoning Board of Review. He would also request that any plan changes be submitted well prior to any future zoning hearings. Attorney Conley responds in the affirmative.

**Motion by Ms. Toledo to continue the subject petition to 6 May 2015.
The motion is Seconded by Mr. Cunha, and Unanimously approved.**

VIII. NEW BUSINESS

1A. Petition No. 6580: Oscar M. and Kerry L. Elmasian, seek a Use Variance, to permit construction of an addition onto a two-unit residence, further expanding a land use previously permitted expansion by special use permit, thereby extinguishing its pre-existing, non-conforming land use status. The proposed addition is now deemed a prohibited expansion, necessitating relief in the form of a use variance, pursuant to Section 19-413(b) 'Alteration of nonconforming use' and Section 19-98 'Schedule of use regulations', for property located at 159 Pavilion Avenue, being Map 502, Block 15, Parcel 007.00, and located within a Residential 4 District.

Oscar M. and Kerry L. Elmasian, 159 Pavilion Avenue, East Providence, RI, subject petitioners, are properly sworn in.

Zoning Officer explains that due to the fact that the subject property has previously received permission of the Zoning Board of Review for an expansion of the pre-existing two-unit residence, they are now required to seek said permission in the form of a use variance from this point forward. In addition, they require dimensional relief.

Mr. Elmasian informs the Board that he is finally seeking permission to introduce a much-needed family room addition. The stated addition requires two (2) forms of relief because he has a pre-existing two-unit residence, and they cannot full comply with certain dimensional criteria.

Chairman Saveory queries the Board, beginning with Mr. Croke.

Mr. Croke inquires if the subject residence, both in use and placement, pre-date the adoption of todays' zoning regulations? Mr. Elmasian responds in the affirmative.

Mr. Croke than inquires if the subject property is situated at the intersection of two (2) streets, thereby defining it as a corner-lot? Mr. Elmasian responds in the affirmative.

Mr. Croke notes that due to the presence of being a corner-lot, they must deal with two (2) front-yard setbacks. Mr. Elmasain responds in the affirmative.

Mr. Croke inquires about the purpose for the addition, and whether or not it will be solely for personal use? Mr. Elmasian responds that it is an expansion of the first-floor, establishing a non-existent family-room. In addition, a larger bathroom will be realized.

Mr. Pascoa responds that he does not have any objections.

Ms. Toledo responds likewise that she does not have any objections.

Mr. Cunha notes the he too does not have any concerns.

Chairman Saveory notes that there is sufficient unique characteristics associated with the subject property to evidence the presence of hardship. He therefore has no personal objections.

Mr. Cunha notes for the record that he wants to compliment property owners that are willing to invest in their property, rather than vacate the City.

Chairman Saveory inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Chairman Saveory queries the Board for a motion.

Motion by Mr. Croke, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East Providence, the Zoning Board hereby finds:

- 1. That the use is compatible with neighborhood and surrounding land uses.**
- 2. That the use will not create a nuisance in the subject neighborhood.**
- 3. That the use will not hinder the future development of the City.**
- 4. That the use does conform to applicable section(s) of the use requested.**

Mr. Croke hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

- 5. That the applicant would be deprived of all beneficial use of the subject property if the petitioner is required to comply with the Ordinance.**

Mr. Croke moves that the use variance be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Chairman Saveory asks Mr. Elmasian if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Elmasian responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Ms. Toledo and Mr. Cunha.

Roll Call Vote:

Mr. Croke - Aye The unique property characteristics include being defined as a corner-lot and being improved with a land use that pre-dates the adoption of the City's Zoning Regulations.

Ms. Toledo - Aye

Mr. Cunha - Aye The relief sought is quite minimal.

Mr. Pascoa - Aye

Chairman Saveory - Aye Fully concurs with Mr. Croke's comments.

Would also note that it will not have any detrimental

Impact on the surrounding neighborhood character.

Use variance unanimously granted, subject to the aforementioned condition(s).

1B. Petition No. 6581: Oscar M. and Kerry L. Elmasian, seek Dimensional Relief, to permit construction of an addition onto a two-unit residence, without complying with certain dimensional standards as described below:

A. Dimensional Variance, to permit retention of the accessory shed, without complying with the requisite accessory (rear-yard) setback pursuant to Section 19-144(b) – Two (2) foot variance, resulting in the referenced shed being situated within approximately three (3) feet of the easterly (rear) property boundary.

B. Dimensional Variance, to permit retention of the accessory shed, without complying with the requisite accessory (side-yard) setback pursuant to Section 19-144(b) – Two (2) foot variance, resulting in the referenced shed being situated within approximately three (3) feet of the northerly (side) property boundary.

C. Dimensional Variance, to permit construction of the referenced addition, without complying with the requisite front-yard setback requirement pursuant to Section 19-145 – Ten and three-tenths (10.30) foot variance, resulting in the referenced addition being situated within approximately four and seven-tenths (4.70) feet of the southerly (front) property boundary, fronting Ray Street.

D. Dimensional Variance, to permit construction of the referenced

addition, resulting in exceeding the maximum building coverage requirement pursuant to Section 19-145 – Three and eight-tenths (3.80%) percent variance, resulting in the subject property being covered approximately twenty-eight and eight-tenths (28.80%) percent with total structures.

E. Dimensional Variance, to permit construction of the referenced addition, resulting in exceeding the maximum impervious lot coverage requirement pursuant to Section 19-145 – Five and seven-tenths (5.70%) percent variance, resulting in the subject property being covered approximately fifty and seven-tenths (50.70%) percent with total structures.

[NOTE: All testimony can be referred to above, under Petition No. 6580.]

Chairman Saveory inquires if there is anyone else present who would like to speak in favor of the subject petition. Hearing and seeing none, Chairman Saveory inquires if there is anyone present who would like to speak against the subject petition. Hearing and seeing none, Chairman Saveory queries the Board for a motion.

Chairman Saveory queries the Board for a motion.

Motion by Mr. Croke, based on all the evidence and testimony presented to the Zoning Board of Review and the personal knowledge of the members of the Board of the land and area of the City of East

Providence, the Zoning Board hereby finds:

1. The hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area, and not due to a physical or economic disability of the applicant excepting those physical disabilities addressed in RIGL 45-24-30(16).

2. The hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.

3. The granting of the requested variances will not alter the general character of the surrounding area or impair the intent or purpose of this chapter or the city's comprehensive plan upon which this chapter is based.

4. That the relief to be granted is the least relief necessary.

Mr. Croke hereby further finds pursuant to Section 19-45(b) of the City of East Providence Zoning Ordinance:

5. In granting the dimensional variances, that the hardship that will be suffered by the owner of the subject property if the dimensional variances are not granted shall amount to more than a mere inconvenience.

Mr. Croke moves that the dimensional variances be Granted subject to the petitioner fulfilling the following conditions:

- 1. Petitioner(s) obtaining any, and all, necessary permits.**
- 2. Strict compliance with the submitted site plan (or amended site plan as it may be applicable), all exhibits, and entire testimony provided during the respective hearing.**

Chairman Saveory asks Mr. Elmasian if he accepts the conditions of approval just stipulated, understanding that strict compliance means that any deviation will necessitate revisiting the Zoning Board of Review; said revisit may be requested by either the Zoning Officer or any member of the Zoning Board of Review. Mr. Elmasian responds that he fully understands and accepts the conditions just stipulated.

The motion is Seconded by both Mr. Cunha and Ms. Toledo.

Roll Call Vote:

Mr. Croke - Aye

Ms. Toledo - Aye

Mr. Cunha - Aye

Mr. Pascoa - Aye

Chairman Saveory - Aye

Dimensional variances unanimously granted, subject to the aforementioned condition(s).

IX. PROCEDURES

Zoning Officer informs the Board that the Assistant City Solicitor has furnished a memo regarding upcoming scheduling conflicts.

Assistant City Solicitor Dias informs the Board that he has already resolved the 6 May 2015, zoning hearing conflict. He has confirmed that City Solicitor Chapman will be covering the respective hearing. However, there is also conflict with the 3 June 2015, hearing.

Zoning Officer suggests that the hearing being pushed forward a week to 10 June 2015. This will then also alleviate any 4th of July conflicts by pushing that meeting out a week as well. The Board and Solicitor discuss the matter and agree to move the hearing to 10 June 2015.

X. ANNOUNCEMENTS

Chairman Saveory announces that the next meeting of the Zoning Board of Review is scheduled for Wednesday, 6 May 2015, at 7:00 PM, in the City of East Providence Council Chambers, City Hall, East Providence, RI.

XI. ADJOURNMENT

Motion to adjourn by Mr. Croke. The motion is Seconded by Ms. Toledo and Unanimously voted to adjourn. Meeting is adjourned at 8:15 P.M.

Edward Pimentel, AICP

Zoning Officer / Clerk

Secretary